



**THIRTY-NINTH PARLIAMENT**

**REPORT 18**

**STANDING COMMITTEE ON PUBLIC  
ADMINISTRATION**

**CLARIFICATION OF AUDITOR GENERAL'S  
ADVICE ON STATUTORY SECRECY PROVISIONS  
AND THE *AUDITOR GENERAL ACT 2006 (WA)***

Presented by Hon Liz Behjat MLC (Chairman)

February 2014

## STANDING COMMITTEE ON PUBLIC ADMINISTRATION

### Date first appointed:

17 August 2005

### Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### “5. Public Administration Committee

5.1 A *Public Administration Committee* is established.

5.2 The Committee consists of 5 Members.

5.3 The functions of the Committee are to –

(a) inquire and report on –

(i) the structure, efficiency and effectiveness of the system of public administration;

(ii) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;

(iii) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;

(iv) any Bill or other matter relating to the foregoing functions referred by the Council;

and

(b) consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, the Inspector of Custodial Services, and any similar officer.

5.4 The Committee is not to make inquiry with respect to –

(a) the constitution, functions or operations of the Executive Council;

(b) the Governor’s Establishment;

(c) the constitution and administration of Parliament;

(d) the judiciary;

(e) a decision made by a person acting judicially;

(f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or

(g) the merits of a particular case or grievance that is not received as a petition.”

### Members as at the time of this inquiry:

Hon Liz Behjat MLC (Chairman)

Hon Darren West MLC (Deputy Chairman)

Hon Nigel Hallett MLC

Hon Jacqui Boydell MLC

Hon Amber-Jade Sanderson MLC

### Staff as at the time of this inquiry:

Dr Julia Lawrinson (Advisory Officer)

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REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION

REPORT 18: CLARIFICATION OF AUDITOR GENERAL'S ADVICE ON STATUTORY SECRECY PROVISION AND THE *AUDITOR GENERAL ACT 2006 (WA)*

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**1 CLARIFICATION OF AUDITOR GENERAL'S ADVICE ON STATUTORY SECRECY PROVISIONS AND THE *AUDITOR GENERAL ACT 2006 (WA)***

1.1 On the 21 November 2013, the Public Administration Committee wrote to the Auditor General, Mr Colin Murphy, in the following terms:

**“At your presentation at the Australasian Study of Parliament Group Conference on 3 October 2013, you stated, in relation to the ‘secrecy provisions’ of the *Auditor General Act 2006*:**

*Our legal advice also suggested that the information could not be provided under section 23, where the Auditor General has some discretion. However, the advice also indicated that the application of section 23 was not clear and recommended legislative amendments to clarify the relationship between sections 23 and 46.*

This Committee notes that you previously gave evidence to this Committee, published in the *Special Report* of the 38<sup>th</sup> Parliament on 27 June 2012, indicating that the advice you received from the State Solicitor's Office did not address s23 of the *Auditor General Act 2006*. Indeed, the legal opinion you provided to the Committee at that time deals exclusively with s46.

Therefore, the Committee seeks clarification on this apparent discrepancy between the oral evidence you provided the Committee on 20 June 2012 and the copy of the legal advice you provided the Committee on one hand, and the statements you made at the ASPG Conference. Specifically, the Committee would like to know whether you received additional legal advice, written or oral, that contemplated the operation of s23.”

1.2 The matter of statutory secrecy provisions and their possible, practical implications for parliamentary privilege were the subject of papers at the Australian New Zealand Association of Clerks at the Table conference, held in Canberra in January 2013, as well as papers presented at the Australasian Study of Parliament Group Conference in 3 October 2013, as noted above.

1.3 In the interests of fully informing debate on this matter, the Public Administration Committee is publishing the Auditor General's response to the Committee's query as an appendix to this report.

1.4 The Committee is satisfied with the response it received from the Auditor General.



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**Hon Liz Behjat MLC**  
**Chairman**

**27 February 2014**



# APPENDIX 1

## LETTER FROM THE AUDITOR GENERAL 5/12/2013

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Our Ref: 4869-04

Hon Liz Behjat MLC  
Chairman  
Standing Committee on Public Administration  
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Dear Ms Behjat

### **REQUEST FOR EXPLANATION OF REMARKS MADE IN RELATION TO S23 OF THE AUDITOR GENERAL ACT 2006**

I am pleased to respond to your request for clarification about the apparent discrepancy between evidence I gave to the Committee on 20 June 2012 concerning advice I received from the State Solicitor's Office (SSO) and comments I made in a presentation to the Australasian Study of Parliament Group on 3 October, 2013.

I can assure the Committee that there is no discrepancy, but rather there is a timing issue.

In clarifying this timing issue I need to outline the chronology of events:

1. On 14 June 2012, I received a request from the Committee to provide written answers and evidence to the Committee by 19 June in relation to questions it would ask me at a hearing on 20 June.
2. As some of those questions appeared to conflict with my understanding of confidentiality constraints imposed upon me under the Auditor General Act 2006, I sought legal advice from the SSO.
3. The SSO provided me with advice on 15 June which confirmed my understanding of the legislation. Essentially, that advice said that I was only permitted to release information arising from my audits to the Joint Standing Committee on Audit, the Estimates and Financial Operations Committee or the Public Accounts Committee. The legal advice made no mention of s23 of the Act.
4. On 15 June, my Office contacted Mr Colin Huntly to advise him of the SSO advice. On 19 June I provided the Committee with a 15 page response where I outlined my legal constraints and gave as much information as I could to the 58 questions asked of me by the Committee.

5. On 20 June I appeared before the Committee to give evidence. At the hearing I was asked whether the SSO mentioned if s23 gave me "...the freedom to answer any of the committee's questions?" I advised that the advice "...did not address that section". (see page 3 of the transcript of evidence)

The Committee asked at the hearing if I would provide it with the legal advice. I agreed to do that and later that day forwarded the advice to the Chairman.

6. On 27 June the Committee included my legal advice in its 'Special Report' to the Parliament.
7. On 13 September I sought advice from the SSO as to whether s23 of the Act provides the Auditor General with the discretion to disclose information to the Public Administration Committee.
8. On 21 September the SSO responded to the request. The advice noted that "*Unfortunately our previous advice to you of 15 June did not touch upon s23 of the Act, given the urgency of the request, however we did contemplate the application of that section when providing the advice*".

The SSO went on to say that a broad or narrow view of s23 could be taken but that it recommended taking a narrow view. That is, s23 should be read in the context of the other section in Part 3, Division 2 of the Act and that the Auditor General's discretion to provide advice and information was limited to those matters which also fell within Part 3, Division 2. The SSO also recommended that amendments should be made to clarify the relationship between s23 and s46 as soon as possible.

9. On 3 October 2013 I presented a paper at the Australasian Study of Parliament Group Conference where I referred to my legal advice of 21 September 2012.

I trust that the above chronology satisfactorily demonstrates that there is no discrepancy between my evidence to the Committee in June 2012 and my presentation at the conference on 3 October 2013. However, I would be pleased to provide any further information or clarification the Committee may require and can be contacted on 6557 7501.

Yours sincerely

  
COLIN MURPHY  
AUDITOR GENERAL  
5 December 2013